IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO. 18089 of 2005

DATE OF DECISION: 18.10.2006

Harnam Singh ....Petitioner.

Versus

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. R.S. Rangpuri, Advocate for the petitioner.

Mr. Ashok Aggarwal, Addl. A.G. Punjab, with
Mr. B.S. Chahal, AAG Punjab,
for the respondents.

J.S. Khehar, J. (oral)

The petitioner is an erstwhile Government employee. He was engaged with the Punjab Education Department. Having rendered service with the Education Department, the petitioner retired on attaining the age of superannuation on 31.8.1996. At the time of his retirement, he was holding the post of Lecturer.

The present controversy relates to the payment of medical reimbursement to the petitioner. This claim has to be adjudicated in terms of the policy instructions issued by the State Government dated 13.2.1995. It is not a matter of dispute that under the aforesaid policy instructions if an employee/erstwhile employee of the State Government has himself treated at a hospital other than those specified therein, he is entitled to

reimbursement at the rates prescribed by the All India Institute of Medical Science and Research, New Delhi (hereinafter referred as `the AIIMS'). Despite the stipulation of the aforesaid condition in the policy instructions dated 13.2.1995, the petitioner claims the entire expenses incurred by him on his treatment, in the peculiar and special facts and circumstances of this case.

While narrating the manner in which the petitioner eventually sought treatment at the Escorts Heart Institute and Research Centre (hereinafter referred to as the Escorts Hospital), it is revealed that, the son of the petitioner (at the relevant time), was serving in the Indian Army and was posted at New Delhi. The petitioner happened to be visiting his son in New Delhi in April 2005, and during the period he was with his son, he is stated to have suffered some chest problem. The petitioner was taken for treatment to the Armed Forces Clinic at New Delhi on 29.4.2005. This factual position is affirmed by the prescription slip, placed on the record of the case as Annexure P6. A perusal of Annexure P6 reveals that the petitioner was referred by the Armed Forces Clinic to the Army Hospital at New Delhi, for further consultation on 30.4.2005. On 30.4.2005, after the petitioner was examined at the Army Hospital, he was referred to the Escorts Hospital, for further treatment, this factual position also emerges from a perusal of the prescription slip Annexure P6. It is not a matter of dispute that the petitioner was admitted at the Escorts Hospital on 4.5.2005 and he remained there till 12.5.2005. During the aforesaid period, the petitioner is stated to have undergone open heart surgery, resulting in expenses to the tune of Rs.1,92,036/-.

On account of the aforesaid treatment taken by the petitioner at

the Escorts Hospital, he submitted a bill for medical reimbursement on 24.5.2005. In furtherance of the submission of his aforesaid claim, the petitioner was required to appear before a Medical Board constituted by the Civil Surgeon, Faridkot, on 12.7.2005, whereupon, the factum of having been subjected to treatment, as alleged hereinabove, was confirmed by the Medical Board and the claim of the petitioner was recommended for further consideration at the hands of the Director, Health and Family Welfare, on 13.7.2005.

Despite the recommendation of the claim, no payment was released to the petitioner. Resultantly, the petitioner approached this Court, by filing the instant writ petition, in November 2005. During the pendency of the instant writ petition, the petitioner was released a sum of Rs.92,543/-. The aforesaid amount, according to the learned counsel for the rival parties, is the amount which the petitioner would have spent, had he gone to the AIIMS for treatment. In sum and substance, therefore, while the respondents aver that the petitioner is entitled to reimbursement for the treatment at the rates stipulated by the AIIMS, the petitioner claims reimbursement of the actual expenses incurred by him.

In order to substantiate his claim, learned counsel for the petitioner primarily relies on the decision rendered by the Apex Court in State of Punjab and others V. Ram Lubhaya Bagga and others, (1998) 4 Supreme Court Cases 117. Learned counsel has invited our attention to the following observations recorded therein:-

> "39. So far as the appeal arising out of SLP (C) No.11968 of 1997 is concerned, we find that the respondent had the heart attack on 9.2.1995 and was advised to go to Delhi on 18.2.1995

> but on account of long strike in the All India Institute of Medical Sciences (AIIMS) he was admitted in the Escorts. On those facts we are not inclined to interfere. The respondent has been paid at the admissible rate in AIIMS but claims the difference between what is paid and what is the admissible rate at Escorts. Looking to the facts and circumstances of this case we hold that the respondent in SLP (C) No.11968 of 1997 is entitled to be paid the difference amount of what si paid and what is the rate admissible in Escorts then. The same should be paid within one month from today. We make it clear reimbursement to the respondents as approved by us be not treated as a precedent but has been given on the facts and circumstances of these cases."

Additionally, our attention has been invited to the decision rendered by a Division Bench of this Court in Madhu Sharma V. The Principal, Kendriya Vidyalaya, 1998(4) Services Cases Today 30, wherein this Court observed as under:-

> " The fact that the petitioner was hospitalised has not been disputed. The fact that the petitioner with a view to save her life was diagnosed as suffering from Hyper Trophic Obstruction Cardiomyopathi and was advised dual chamber pacemaker has also not been denied. The fact that the petitioner was treated in the PGI a government recognised institution has also not been denied. Further, the petitioner had to incur expenses for dual chamber implantation also could not be disputed. What, however, the petitioner is confronted with is that according to

1944 Rules whatever medical facilities the petitioner is entitled to have been given to her as also that by Annexure R-1 dated 19.8.1994 which are instructions that have been received from the Department of Health maximum amount to be reimbursed towards purchase of pacemaker is limited to Rs.26000/- or the cost of pacemaker whichever is less and the balance cost, if any, has to be borne by the beneficiaries themselves. It may be mentioned at this stage that the petitioner is relying upon Annexure R-8/1 which is office memo. dated 12.6.1996 and has been issued by the Government of India, Ministry of Health & Family Welfare wherein cost of pacemaker (Dual Chamber) has been fixed at Rs.1,15,000/- as a ceiling. The mention in Annexure R-8/1is also of pacemaker (single chamber) without rate response and pacemaker (single chamber) without rate response has been fixed at Rs.37,500/-, the one fixed for pacemaker with rate response is Rs.65,000/-. As mentioned above, the pacemaker (dual chamber) ceiling is fixed at Rs.1,15,500/-. The petitioner as per the medical bill supported by proper evidence incurred an expense of Rs.1,43,000/- as cost of dual chamber. Certificate Annexure P-5 wherein the cost of pacemaker (Dual Chamber) at Rs.1,43,000/- has been mentioned was issued by Dr.Jagmohan S.Verma, Addl. Professor, Department of Cardiology, PGI Chandigarh. There is no dispute as mentioned above that the petitioner did not incur an expense of Rs.1,43,000/- for implantation of dual chamber permanent pacemaker. It is significant to mention here

that earlier in point of time when petitioner had represented that estimated cost of pacemaker (Dual Chamber) would be Rs.1,50,000/-, the petitioner was given an advance to the extent of 80% Her case at this stage was considered favourably and according to ground realities. However, as mentioned above, it is only after the petitioner submitted the bill after treatment that it has been thought over by the respondents that the petitioner is not entitled to more than Rs.26,000/- for the cost of pacemaker. In so far as order Annexure R-1 is concerned, it was issued in 1994 and it does not refer to different kinds of pacemakers. All that has been mentioned is that the maximum amount to be reimbursed wold be limited to Rs.26,000/- or the cost of the pacemaker which would be less. It is clear from the document Annexure P8/1 that it is in 1996 only that it was realised by the Government of India that pacemakers are of different types and obviously the cost of different pacemakers is different. As mentioned above, pacemaker (Single Chamber) without rate response is said to be costing Rs.37,500/- whereas pacemaker (Single Chamber) with rate response costs Rs.65,000/-. Pacemaker (Dual Chamber) is said to have cost Rs.1,15,000/-. We are saying the costs of different pacemakers as have been mentioned in Annexure P-8/1, for the reason that if the price was less or more, the same should have been mentioned accordingly. In so far as, therefore, Annexure R-1 is concerned, the same cannot come in the way of the petitioner in denying her the proper medical reimbursement. As referred to

above, the instructions pertaining to the year 1994 have taken into consideration only one kind of pacemaker. In so far as Annexure P-8/1 is concerned, it is the case of the respondents that it came into being after the petitioner had undergone surgery and therefore, the petitioner cannot take advantage of the same. It is true that there is mention in para 8 of Annexure P-8/1 that this will be applicable from the date of issue. The petitioner had undergone surgery when she was admitted in the PGI from 27.5.1996 to 31.5.1996. However, this Court is of the considered view that the cost of pacemaker (Dual Chamber) as on the date when the petitioner had undergone surgery was more than the one mentioned in order Annexure P-8/1. The price mentioned therein could not have been made applicable from the date when it was issued. The order Annexure P-8/1 having been made applicable from the date of issue appears to be totally unreasonable as that would result into depriving a government employee of medical reimbursement and again in a case where such an employee is unable to spend such a huge amount from his/her own pocket to deprive him, of his life. Not only that para 9 of Annexure P-8/1 imposes unreasonable condition, even contents of para 5 reveal that the Government while issuing the said order had not given a serious thought to the matter under consideration. It has been mentioned in para 5 that beneficiary will have to invite three quotations for purchase of requisite item and the reimbursement will be made to him on the basis of the lowest of the three quotations or the cost of

ceiling as mentioned above. Surely when the patient is gasping for breath and loss of one minute can result into his death, he cannot be running around inviting quotations for purchase of requisite item. That apart, as said above, when a government employee is entitled to reimbursement, then it cannot be limited where it may become wholly unrealistic. If the facts of this case are examined as illustration, it would become amply clear that petitioner was only to get Rs.26,000/-out of the amount of Rs.1,50,000/- and if she cold not cater for a gap of Rs.1,24,000/- she would have survived only on the prayers made to God and by no other means. Such instructions which trample justice in a given case resulting into deprivation of life, as mentioned above, if not struck down can be ignored with contempt. We accordingly follow this principle and direct respondents to reimburse the petitioner with regard to the cost of pacemaker (Dual Chamber). Before we part with the judgment, we may mention that it is not a case where the petitioner had gone abroad for treatment or to a costly eminent hospital in the country itself. She had chosen PGI Chandigarh where costs of treatment regarding all ailments is less than even Escorts and Appolo hospitals at Delhi. The cost of pacemakers (Dual Chamber) as having been actually spent by the petitioner has been duly certified by the additional Professor of Cardiology of PGI itself and as mentioned above, there is no dispute regarding this whatsoever. In so far as the petitioner having spent the amount while taking a room in the private

> ward and not in a general ward is concerned, the counsel has rightly withdrawn challenge made in that direction and we are also of the view that the status of the petitioner did not permit her to have a private ward, she would have better gone for general ward."

Learned counsel also invited our attention to the decision rendered by another Division Bench of this Court in Sarojini Sawhney V. Panjab University, Chandigarh and others, 2005(2) ILR (Punjab) 600, wherein this Court observed as under:-

> " We are in respectful agreement with the sentiment expressed by the learned Single Judge of this Court. As noticed earlier, the petitioner has candidly disclosed the entire sequence of events leading to the claim made for reimbursement of the medical expenses. She had even submitted that even if under the Rules, her claim is not admissible, the same be treated as special case. The relaxation provision under aforesaid Rule 7 was brought to the notice of the respondents. Yet the respondents did not consider the claim on any humanitarian ground. The provision of reimbursement of medical expenses has been made in various statutory rules to give meaning to the expression "right to life" as contained in Article 21 of the Constitution of India. The petitioner was culled out the observations made by the Supreme Court and this Court with regard to the aims and objectives of providing reimbursement of medical expenses. We may notice some of the judgments relied upon by the petitioner. In the case of Consumer Education and

Research Centre and others V. Union of India and others, 1995 (3) RSJ 188 (SC), the Supreme Court has observed as under:-

"22. The expression "life"assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the work place and leisure. In Olga Tellis V. Bombay Municipal Corporation, 1985(3) SCC 545, this Court held that no person can live without the means of living i.e. means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content of meaningfulness but it would make life impossible to live, leave aside what makes life livable. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilisation which makes life worth living. The expanded connotation of life wold mean the tradition and cultural heritage of the persons concerned. In State of H.P. V. Umed Ram Sharma this Court held that the right to life includes the quality of life as understood in the richness and fullness by the ambit of the Constitution. Access to road was held to be an access to life itself in that State.

24. The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence

but also robust health and vigour without which worker would lead life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposes to health hazards due to indigence to bread-winning for himself and his dependents, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such actions which will promote health, strength and vigour of the workman during the period of employment and leisure happiness. The health and strength of the worker is an integral fact of right to life. Denial thereof denudes the workman the finer facts of life violating Article 21. The right to human dignity, development of personality, social protection, right to

rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution. Facilities for medical care and health to prevent sickness ensure stable manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruits of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally+. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights of the workman.

25. Therefore, we hold that the right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is fundamental right under Article 21, read with Articles 39(e), 41,43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

In order to repudiate the submissions advanced by the learned counsel for the petitioner, learned counsel for the respondents also invited our attention to the decision rendered by the Supreme Court in Ram Lubhaya Bagga's case (supra). Learned counsel for the respondents drew our attention to the following observations recorded therein:-

"25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any

hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates of AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, base don howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

... .

27. Coming back to test the claim of the respondents, the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be ex facie violative of Article 21. Under the new policy, medical facility

continues to be given and now an employee is given free choice to get treatment in ay private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The words are:

> "…. to the level of expenditure as per rates fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure whichever is less."

… … …

31. The next question is whether the modification of the policy by the State by deleting its earlier decision of permitting reimbursement at the Escorts and other designated hospitals' rate is justified or not? This of course will depend on the facts and circumstances. We have already held that this Court would not interfere with any opinion formed by the Government if it is based on relevant facts and circumstances or based on expert advice.

… … …

35. Learned counsel for the appellant submits that in the writ petition filed, the respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial strain. We having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the appellant's decision to exclude the designated hospital cannot be said to be

such as to be violative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of a large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of the public at large. No Fundamental Right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that Government will give due consideration and priority to the health budget in future and render what is best possible.

36. For the aforesaid reasons and finding we uphold Government's new policy dated 13.2.1995 and further hold it not to be violative of Article 21 of the Constitution of India.

37. In the civil appeals arising out of SLPs (C) Nos.13167 and 12418 of 1997, the surgery at Escorts was after the introduction of the new policy and therefore the extent of medical reimbursement can be only according to the rates prescribed by AIIMS. However, the respondents therein are not entitled to the full expenditure that was incurred at Escorts. We, therefore, allow the appeals in part and direct that the respondents are entitled to reimburse only at AIIMS rate. The appellant will therefore reimburse the respondents to the extent within one month from today."

Although the contention of the learned counsel for the

petitioner is that there were exceptional circumstances which compelled him to seek treatment, at the Army Hospital, New Delhi, in terms of the advice tendered to him, at the Escorts Hospital, and as such, in terms of the observations recorded by the Apex Court, relied upon by the learned counsel for the petitioner, he was entitled to reimbursement of the entire expenses incurred by him towards his treatment.

As against the aforesaid contention of the learned counsel for the petitioner, it is the submission at the hands of the learned counsel for the respondents that there was no justification whatsoever for the petitioner to have sought treatment at the Escorts Hospital, especially when AIIMS is also located in the same city as the Escorts Hospital, and it was open to the petitioner to have sought treatment there, in view of the policy instructions dated 13.2.1995, which clearly limited the claim of reimbursement to the amount stipulated for the same by the AIIMS. Learned counsel for the respondents also vehemently contends that the petitioner has not, in his entire pleadings or during the course of his arguments, expressed any justification for having chosen the Escorts hospital over the AIIMS. It is not even the case of the petitioner that the treatment for the disease suffered by him, was not available at the AIIMS.

Having examined the matter in its totality, we are of the view that the Apex Court in Ram Lubhaya Bagga's case (supra) upheld the policy under which the petitioner has staked his claim for medical reimbursement i.e. the policy instructions dated 13.2.1995. By the aforesaid determination the Apex Court affirmed the determination at the hands of the State Government, not to pay its employees the actual medical expenses incurred by them, beyond those prescribed by the AIIMS. The only question, in the

aforesaid background, which needs to be decided is, whether there were exceptional circumstances compelling the petitioner to seek treatment at the Escorts hospital. In fact, the question can be posed in another manner as well, namely, whether the petitioner was precluded from taking treatment at the AIIMS. A perusal of the observations recorded in Ram Lubhaya Bagga's case (supra) in paragraphs 35 and 39 needs pointed and close examination. The sole exception carved out by the Apex Court is in paragraph 39 of the aforesaid judgment was in a case, where an individual was compelled to seek treatment at the Escorts hospital, because treatment at the said juncture was not available at AIIMS, because the staff at AIIMS was on strike. In similar circumstances, as the ones in hand, where a government employee, without compelling reasons, had sought treatment at the Escorts hospital, the matter was adjudicated upon in paragraph 37 of the judgment in Ram Lubhaya Bagga's case (supra) wherein the said employee was denied reimbursement of actual expenses incurred by him.

We are satisfied that the present controversy, is not one which will fall, within the parameters of the observations recorded in paragraph 39 of the judgment rendered by the Apex Court in Ram Lubhaya Bagga's case (supra), and as such, it is not possible for us to accept the claim of the petitioner for reimbursement of actual expenses incurred by him.

It would, however, be pertinent to mention that Mr. Ashok Aggarwal, Additional Advocate General, Punjab invited our attention to the observations made by the Supreme Court in last sentence of paragraph 39 of the judgment in Ram Lubhaya Bagga's case (supra), wherein the Apex Court clarified that the claim of the respondents, in the mater being dealt with in paragraph 39 of the judgment, be not treated as a precedent, and that relief

to the respondent was being given in the peculiar facts and circumstances of that case. On the basis of the aforesaid observations, it is submitted by the learned counsel for the respondents, that it is not open to this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, to extend the benefit of actual expenses towards medical reimbursement to any employee whatsoever. It is not necessary for us to answer this issue in the facts and circumstances of this case, because, as already noticed hereinabove, we have not chosen to grant any benefit to the petitioner herein, on the basis of the aforesaid observations recorded in paragraph 39 of the said judgment. The said issue would be adjudicated upon, as and when it arises.

The instant writ petition is disposed of accordingly.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

October 18, 2006.
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